

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ARTS CENTER AND THEATER OF
SCHENECTADY, INC.,

Plaintiff,

V.

1:09-CV-1400

VALLEY FORGE INSURANCE CO.,

Defendant.

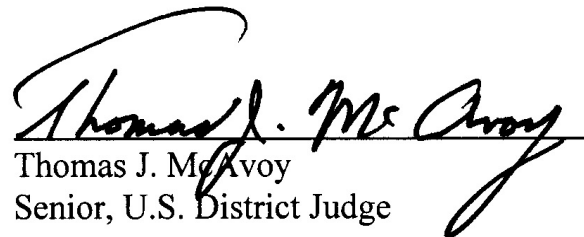
ORDER

THIS MATTER having been opened to the Court by way of (i) a Motion to Dismiss by Ford Marrin Esposito Witmeyer & Gleser, LLP, counsel for Defendant Valley Forge Insurance Company; and (ii) a Cross-Motion to Amend by Couch White, LLP, counsel for Plaintiff Arts Center and Theater of Schenectady, Inc., and the Court having considered all papers submitted in support of the motions and in opposition thereto; and the Court having heard the oral argument of counsel for the parties on February 8, 2010; and for other and good cause having been shown:

IT IS **ORDERED** that, for the reasons stated in open Court on February 8, 2010:

1. Defendant's Motion to Dismiss is GRANTED and Plaintiff's second cause of action, for breach of the covenant of good faith and fair dealing is hereby dismissed as duplicative fo the first cause of action; and
2. Plaintiff's Cross-Motion to Amend its complaint is GRANTED, but Plaintiff may not amend its complaint to include a claim for attorneys' fees and costs.

Dated: February 25, 2010



Thomas J. McAvoy
Senior, U.S. District Judge